

Application No. 10/750,253  
Amendment dated November 9, 2005  
Reply to Office Action of August 11, 2005

### **REMARKS**

Claims 1-45 are presented for Examiner Evans' consideration.

Claim 1 has been amended to further clarify that the topsheet layer and barrier layer of the absorbent assembly have lateral extensions that are C-folded or Z-folded. Support for this amendment can be found at least at page 16, lines 10-12 of Applicants' specification.

Claim 32 has been amended to further clarify that the absorbent article includes an outer layer overlaying the absorbent assembly and the exterior surface of the elastic inner layer. Also, claim 32 has been amended such that the front waist region comprises a fastener located laterally inward of each longitudinal side edge which is adapted to engage into the elastic inner layer of the garment in the back waist region and the back waist region comprises a fastener located laterally inward of each longitudinal side edge which is adapted to engage into the outer layer of the garment in the front waist region. Support for these amendments can be found at least at page 18, lines 9-28 and page 21, lines 14-16.

No new matter has been added.

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and the following arguments is respectfully requested.

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### **ARGUMENTS**

**By way of the Office Action mailed August 11, 2005, claims 1, 4-5, 7-14, 17, 20-21, 23-29, 32, 35-36 and 38-42 stand rejected under 35 U.S.C. § 102 as allegedly being anticipated and thus unpatentable over U.S. Patent Number 5,817,086 to Kling (*Kling*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.**

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegall Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987); M.P.E.P. § 2131. In addition, "[t]he elements must be arranged as required by the claim." M.P.E.P. § 2131 referencing *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990); see also *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). Also, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim." M.P.E.P. § 2131 (citing *Richardson*, 868 F.2d at 1236 (Fed. Cir. 1989)).

Applicants' currently amended claim 1 recites that the topsheet layer and barrier layer of the absorbent assembly have lateral extensions that are C-folded or Z-folded. *Kling* fails to anticipate Applicants' claim 1 because the absorbent assembly of *Kling* does not include a topsheet layer and barrier layer having lateral extensions that are C-folded or Z-folded. Therefore, the rejection as to claim 1 should be withdrawn. Likewise, claims 4-5 and 7-14 depend from claim 1 and are patentably distinct over *Kling* for at least the same reason as claim 1 discussed above. Therefore, the rejections as to these claims should also be withdrawn.

Applicants' claim 17 requires a front ear portion and a back ear portion bonded to each longitudinal side edge in the front waist region and the back waist region respectively. *Kling* fails to teach, either expressly or inherently, a front ear portion and a back ear portion bonded to each longitudinal side edge and therefore fails to anticipate Applicants' claim 17.

The Examiner states that "*Kling* has a front and rear region (Fig 1, 12 and 13) with ear portions, which ear portions are defined by extensions of the side, on each side...." 'Extensions of the side' are not ear portions bonded to each longitudinal side edge as

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required by claim 17. Therefore, *Kling* fails to teach each and every element and the rejection as to claim 17 should be withdrawn. Likewise, claims 20-21 and 23-29 depend from claim 17 and are patentably distinct over *Kling* for at least the same reason as claim 17 discussed above. Therefore, the rejections as to these claims should also be withdrawn.

Applicants' currently amended claim 32 recites that the front waist region comprises a fastener adapted to engage into the elastic inner layer of the garment in the back waist region and the back waist region comprises a fastener adapted to engage into the outer layer of the garment in the front waist region. *Kling* fails to anticipate Applicants' claim 32 because *Kling* does not teach a front waist region comprising a fastener adapted to engage into the elastic inner layer of the garment in the back waist region and a back waist region comprising a fastener adapted to engage into the outer layer of the garment in the front waist region. Therefore, the rejection as to claim 32 should be withdrawn. Likewise, claims 35-36 and 38-42 depend from claim 32 are patentably distinct over *Kling* for at least the same reason as claim 32 discussed above. Therefore, the rejections as to these claims should also be withdrawn.

**By way of the Office Action mailed August 11, 2005, claims 2-3, 6, 18-19, 22, 33-34 and 37 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 5,817,086 to Kling (*Kling*) in view of U.S. Patent Number 6,570,056 to Tanzer (*Tanzer*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.**

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. M.P.E.P. § 2142, 2143.

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First, the Examiner has failed to cite adequate suggestion or motivation in either *Kling* or *Tanzer* that would lead one of skill in the art to combine the references. Therefore, no *prima facie* case of obviousness has been established and the rejection as to these claims should be withdrawn.

The Examiner states that "it would have been obvious...to modify *Kling*'s absorbent article with selectable stretching regions as taught by *Tanzer*, to ensure a flexible and comfortable fit of the absorbent article on the wearer" (emphasis added) without directing Applicants to any specific language supporting such an assertion. The motivation related to "comfort" appears to be prohibited post hoc rationalization for the combination, because *Kling* already purports to teach a top layer that is flexible (abstract) and soft (col. 3: line 57). This is not adequate motivation to combine.

Second, the Examiner has failed to show a reasonable expectation of success. There is no indication that the selectively stretchable elastic layer of *Tanzer* would function with *Kling*. *Kling* appears to orient the majority of elastic elements in the longitudinal direction to function with the tongue and opening. The end regions of *Tanzer* are stretchable in the lateral direction. Therefore, combining *Tanzer* with *Kling* would seem to create stretchability in a direction opposite of that sought by *Kling*. The Examiner has not provided any teaching to indicate that such a combination would have a reasonable expectation of success as required to make a valid *prima facie* case of obviousness.

Third, as discussed above, *Kling* fails to teach or suggest an absorbent assembly having a topsheet layer and a barrier layer having extensions that are C-folded or Z-folded as required by Applicants' claim 1. *Tanzer* does not teach or suggest an absorbent assembly having a topsheet layer and a barrier layer having extensions that are C-folded or Z-folded. Therefore, the addition of *Tanzer* does not cure the defects of *Kling* and the combination of *Kling* and *Tanzer* fails to teach or suggest all the limitations of claim 1. As such, the combination fails to render Applicants' claim 1 obvious and the rejection should be withdrawn. Claims 2-3 and 6 depend from claim 1 and are non-obvious for at least the same reason. The rejection as to these claims should also be withdrawn.

Also as discussed above, *Kling* fails to teach or suggest a front ear portion and a back ear portion bonded to each longitudinal side edge as required by Applicants'

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claim 17. *Tanzer* does not teach or suggest a front ear portion and a back ear portion bonded to each longitudinal side edge. Therefore, the addition of *Tanzer* does not cure the defects of *Kling* and the combination of *Kling* and *Tanzer* fails to teach or suggest all the limitations of claim 17. As such, the combination fails to render Applicants' claim 17 obvious and the rejection should be withdrawn. Claims 18-19 and 22 depend from claim 17 and are non-obvious for at least the same reason. The rejection as to these claims should also be withdrawn.

Finally, as discussed above, *Kling* fails teach or suggest a front waist region comprising a fastener adapted to engage into the elastic inner layer of the garment in the back waist region and a back waist region comprising a fastener adapted to engage into the outer layer of the garment in the front waist region as required by Applicants' claim 32. *Tanzer* does not teach or suggest a front waist region comprising a fastener adapted to engage into the elastic inner layer of the garment in the back waist region and a back waist region comprising a fastener adapted to engage into the outer layer of the garment in the front waist region. Therefore, the addition of *Tanzer* does not cure the defects of *Kling* and the combination of *Kling* and *Tanzer* fails to teach or suggest all the limitations of claim 32. As such, the combination fails to render Applicants' claim 32 obvious and the rejection should be withdrawn. Claims 33-34 and 37 depend from claim 32 and are non-obvious for at least the same reason. The rejection as to these claims should also be withdrawn.

By way of the Office Action mailed August 11, 2005, claims 15-16, 30-31 and 43-45 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 5,817,086 to Kling (*Kling*) in view of U.S. Patent Number 6,570,056 to Tanzer (*Tanzer*) and further in view of EP 1 201 212 to Muller *et al.* (*Muller*). This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

As discussed above, the Examiner failed to make a proper *prima facie* case of obviousness with the combination of *Kling* and *Tanzer*. The addition of *Muller* does not cure the defects of the *Kling* and *Tanzer* combination.

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First the Examiner fails to provide any suggestion or motivation as to why one skilled in the art would combine *Muller* with *Kling* and *Tanzer*. The Examiner states that it would have been obvious "to modify *Kling* in view of *Tanzer* by providing an elastic waist band in the middle region of the longitudinal edge with a length of 11 cm and attachment regions of 2.5 cm to *provide a comfortable, but secure fit around the wearer.*" (emphasis added). This is merely a conclusory statement with no substantiation provided. Merely restating a purported benefit, i.e., 'a comfortable, but secure fit around the wearer' does not meet the burden required to establish a *prima facie* case of obviousness.

Even assuming, *arguendo*, that it was proper to combine *Kling*, *Tanzer* and *Muller*, the combination fails to teach or suggest all the claim limitations and therefore no *prima facie* case of obviousness has been made.

As discussed above, the combination of *Kling* and *Tanzer* fails to teach or suggest an absorbent assembly having a topsheet layer and a barrier layer having extensions that are C-folded or Z-folded as required by Applicants' claim 1. *Muller* does not teach or suggest an absorbent assembly having a topsheet layer and a barrier layer having extensions that are C-folded or Z-folded. Therefore, the addition of *Muller* does not cure the defects of *Kling* and *Tanzer*. As such, the combination fails to render Applicants' claim 1 obvious. Claims 15-16 depend from claim 1 and are non-obvious for at least the same reason. The rejection as to these claims should be withdrawn.

Also as discussed above, the combination of *Kling* and *Tanzer* fails to teach or suggest a front ear portion and a back ear portion bonded to each longitudinal side edge as required by Applicants' claims 17 and 45. *Muller* does not teach or suggest a front ear portion and a back ear portion bonded to each longitudinal side edge. Therefore, the addition of *Muller* does not cure the defects of *Kling* and *Tanzer*. As such, the combination of *Kling*, *Tanzer*, and *Muller* fails to teach or suggest all the limitations of claims 17 and 45 and therefore fails to render Applicants' claims 17 and 45 obvious. The rejection as to claim 45 should be withdrawn. Claims 30-31 depend from claim 17 and are non-obvious for at least the same reason. The rejection as to these claims should also be withdrawn.

Also as discussed above, the combination of *Kling* and *Tanzer* fails teach or suggest a front waist region comprising a fastener adapted to engage into the elastic inner layer of

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the garment in the back waist region and a back waist region comprising a fastener adapted to engage into the outer layer of the garment in the front waist region as required by Applicants' claim 32. The addition of *Muller* does not cure this defect. Therefore, the combination of *Kling*, *Tanzer* and *Muller* fails to teach or suggest all the limitations of claim 32. As such, the combination fails to render Applicants' claim 32 obvious. Claims 43-44 depend from claim 32 and are non-obvious for at least the same reason. The rejection as to these claims should be withdrawn.

For at least the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: (920) 721-3016.

Respectfully submitted,

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